

EXHIBIT 6

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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FRANCISCO RODRIGUEZ, and ARISTIDES
ALFREDO DILLATORO,

Plaintiffs,

-against-

Case No.
16-cv-00254

RIDGE RESTAURANT, INC. D/B/A ALFREDO'S
PIZZERIA, DENNIS D'ONOFRIO, and PHILIP
D'ONOFRIO,

Defendants.

-----X

September 16, 2019
1:31 p.m.

193 Griffing Avenue
Riverhead, New York

EXAMINATION BEFORE TRIAL of PHILIP
D'ONOFRIO, one of the Defendants herein, taken
by the Plaintiffs, pursuant to Article 31 of the
Civil Practice Law and Rules of Testimony, and
Court Order, held at the above-mentioned time
and place, before Donna L. Ritzmann, a Notary
Public of the State of New York.

A P P E A R A N C E S:

MOSER LAW FIRM, P.C.
Attorney for Plaintiffs
Three School Street - Suite 207B
Glen Cove, New York 11542

BY: STEVEN J. MOSER, ESQ.

WICKHAM, BRESSLER & GEASA, P.C.
Attorneys for Defendants
13015 Main Road - P.O. Box 1424
Mattituck, New York 11952

BY: ERIC J. BRESSLER, ESQ.

ALSO PRESENT:

DENNIS D'ONOFRIO

FEDERAL STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED by
and between the parties hereto, through their
respective counsel, that the certification,
sealing and filing of the within examination
will be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED
that all objections, except as to the form of
the question, will be reserved to the time of
the trial;

IT IS FURTHER STIPULATED AND AGREED that
the within examination may be signed before any
Notary Public with the same force and effect as
if signed and sworn to before this Court.

1 P. D'Onofrio

2 P H I L I P D ' O N O F R I O, the witness

3 herein, having been first duly sworn by a

4 Notary Public in and of the State of New

5 York, was examined and testified as

6 follows:

7 EXAMINATION BY

8 MR. MOSER:

9 Q Would you please state your full
10 name for the record.

11 A Philip D'Onofrio.

12 Q Where do you reside?

13 A 65 Sweet Gum Lane, Miller Place,
14 New York 11764.

15 MR. MOSER: Good afternoon.

16 THE WITNESS: Good
17 afternoon.

18 MR. MOSER: My name is
19 Steven Moser.

20 Q Were you here for the testimony of
21 your brother?

22 A Yes.

23 Q Do you believe that his testimony
24 was truthful and accurate?

25 A Yes.

1 P. D'Onofrio

2 Q Is there any reason why you cannot
3 testify truthfully and accurately today?

4 A No.

5 Q During the time period that
6 Mr. Villatoro worked for --

7 MR. BRESSLER: The
8 pizzeria.

9 Q -- the pizzeria, what was your
10 position with the pizzeria?

11 A Manager.

12 Q How did you get that position?

13 A We can say I was qualified.

14 Q Okay. Who hired you?

15 A My brother.

16 Q When did he hire you?

17 A 2001.

18 Q Are you still working at that
19 pizzeria today?

20 A No.

21 Q When did you stop working at that
22 pizzeria?

23 A About three years ago.

24 Q Why did you stop working at that
25 pizzeria?

1 P. D'Onofrio

2 A We just -- I just went different
3 ways.

4 Q You resigned?

5 A Yeah.

6 Q During the time period that
7 Mr. Villatoro worked at the pizzeria, how many
8 managers were there?

9 A Normally two.

10 Q Who were those two managers?

11 A I do not remember who the manager
12 was back in 2014 with me.

13 Q Is it fair to say that you were
14 one of the managers of the pizzeria during the
15 entire time that Mr. Villatoro worked there?

16 A Yes.

17 Q Can you describe Mr. Villatoro as
18 an employee?

19 A How do I describe him as an
20 employee?

21 Q Yes.

22 A He was a very typical prep worker,
23 dishwasher, you know, they come in, do their
24 work, go home.

25 Q Does anything stand out about his

1 P. D'Onofrio

2 employment? Other than this lawsuit, right, do
3 you remember --

4 MR. BRESSLER: Are you
5 talking about his performance?

6 MR. MOSER: Yes.

7 MR. BRESSLER: What are we
8 talking about?

9 MR. MOSER: Yeah, we're
10 talking about his performance.

11 A No, he was an average employee,
12 you know, hard-working guy.

13 Q When did he stop working there?

14 A I don't remember the exact.

15 Q Why did he stop working there?

16 A I have no idea.

17 Q Do you know whether he was fired?

18 A No. If he was fired, it would have
19 been by me or by my brother at the time. And I
20 definitely did not fire him.

21 Q Okay. Now, did you have the alarm
22 code?

23 A Yeah.

24 Q How many days per week were you
25 opening the restaurant between October of 2014

1 P. D'Onofrio

2 through April of 2015?

3 A Anywhere between four and six
4 days.

5 Q Where do you live?

6 A Miller Place.

7 Q How close was Miller Place to the
8 pizzeria?

9 A Six minutes.

10 Q What time would you typically
11 leave your house to get to the pizzeria?

12 A About 9:00 o'clock.

13 Q And what time would you typically
14 arrive at the pizzeria?

15 A Before 9:30 'cause I would usually
16 stop for coffee.

17 Q When you arrived at the pizzeria,
18 would you disengage the alarm?

19 A Mm-hmm.

20 MR. BRESSLER: Say yes.

21 A Yes.

22 Q By putting in your code?

23 A Yes.

24 Q Did you have any responsibilities
25 in the morning that would have prevented you

1 P. D'Onofrio

2 from being at work by 9:30?

3 MR. BRESSLER: You mean

4 ever?

5 A What do you mean by that?

6 Q Well, was there anything -- did

7 you have kids that you had to bring anywhere,

8 were there any family responsibilities --

9 A There were --

10 Q -- were there any work

11 responsibilities?

12 A On a typical day-to-day basis, no,

13 I mean were there days that, you know, I had to

14 run a little bit late, yeah.

15 Q How many times would you run a

16 little bit late?

17 A Seldom.

18 Q How many times did you arrive

19 after 10:00 o'clock a.m.?

20 A Very seldom.

21 Q Can you approximate for me between

22 September of 2014 and April of 2015 how many

23 days you arrived after 10:00 o'clock a.m.?

24 A Maybe twice.

25 Q Okay. Do you recall how late you

1 P. D'Onofrio

2 were on those particular days?

3 A No.

4 Q Could it have been a half an hour?

5 A Yeah.

6 Q Okay. And when you arrived at the

7 restaurant those days, was Mr. Villatoro

8 waiting?

9 A No, I was always there before
10 anybody.

11 Q Okay. Even if you were late you
12 were there before anybody --

13 A Before everybody.

14 Q -- is that fair to say?

15 A Yes.

16 Q So on the two days that you were
17 late, how many employees were working at the
18 restaurant?

19 MR. BRESSLER: Object to
20 the form. He didn't testify he
21 was there two days late, he said
22 maybe.

23 A Maybe.

24 Q On the two days that you were
25 maybe late, how many employees were working at

1 P. D'Onofrio

2 the restaurant?

3 A I don't know.

4 Q Was it more than --

5 A Depends on the day. What day of
6 the week it was, beginning of the week, end of
7 the week.

8 Q Was it at least two?

9 A Absolutely. Yeah.

10 Q Was it at least three?

11 A Yes.

12 Q What was the minimum number of
13 employees that were working at that
14 restaurant --

15 MR. MOSER: Withdrawn.

16 Q What was the minimum number of
17 employees that were working at that pizzeria on
18 any day between --

19 MR. BRESSLER: During the
20 relevant period as you defined it
21 in the prior exam.

22 MR. MOSER: He doesn't
23 remember the relevant period.

24 MR. BRESSLER: Yes, he
25 does.

1 P. D'Onofrio

2 Do you know what period he
3 is talking about?

4 THE WITNESS: Yes.

5 MR. BRESSLER: While
6 Villatoro was working there.

7 THE WITNESS: Yes. Yes.

8 MR. BRESSLER: All right.

9 MR. MOSER: Thank you.

10 A Minimum three, four.

11 Q Your testimony is that on the two
12 days that you were maybe late that all of the
13 employees were later than you were; is that fair
14 to say?

15 A They're not late, I'm always there
16 before everybody. They're responsible to be
17 there at 10:00 a.m., but I was always there
18 before them.

19 Q Okay.

20 A (Continuing) So making them late
21 would be after 10:00 o'clock.

22 Q So I asked you earlier did you
23 ever get there after 10:00 you said maybe two
24 times?

25 A Right.

1 P. D'Onofrio

2 Q Do you remember saying that?

3 A But that wouldn't mean that nobody
4 else was there, if I couldn't be there for 10:00
5 o'clock, I made sure somebody else was there.

6 Q Who would you make sure was there?

7 A Whether it would be my brother,
8 another manager at the time.

9 Q So the alarm records, if we get
10 them, are going to show that the restaurant was
11 always open by 10:00; is that fair to say?

12 A Absolutely.

13 Q What time were employees expected
14 to work until?

15 A Depending on their shift.

16 Q What time was Mr. Villatoro
17 expected to work until?

18 A 10:00 p.m.

19 Q Were you always at the restaurant
20 when you were the manager?

21 A Yes.

22 Q How many days per week were you
23 the manager for this particular period of time?

24 A I think we discussed this already.
25 Anywhere between four and five days.

1 P. D'Onofrio

2 Q Okay. And did you have any
3 conversations with Mr. Villatoro about the meals
4 or the breaks?

5 A Not that I remember.

6 Q Did you see employees taking
7 breaks?

8 A Absolutely.

9 Q Did you ever track their breaks?

10 A No, but I have covered breaks for
11 them, you know, if somebody needed to go out or
12 whatnot, so.

13 Q Okay. Did you ever track their
14 breaks in writing?

15 A No.

16 Q Did you have any personal
17 knowledge as to whether employees were taking
18 half hour lunches?

19 A Yeah.

20 Q Do you have any personal knowledge
21 as to whether Mr. Villatoro was taking a half
22 hour lunch?

23 A Yes.

24 Q What's that personal knowledge?

25 A Just me being a manager and

1 P. D'Onofrio

2 overseeing my employees and knowing that my
3 kitchen staff all made it through their breaks.

4 Q Did you ever take note of any day
5 in particular on which --

6 MR. MOSER: Withdrawn.

7 Q Do you remember any specific day
8 in which Mr. Villatoro took a half hour lunch?

9 A Do I know any specific day that he
10 did?

11 Q Yes.

12 A Everyday that he worked.

13 Q Okay. What time did he begin
14 taking his lunch?

15 A It would probably -- it would be
16 anywhere between 1:00 o'clock and 4:00 o'clock.

17 Q Can you recall the specific time
18 that he took lunch on any specific day?

19 A No.

20 Q Can you recall the specific time
21 when he returned from lunch on any specific day?

22 A No.

23 Q As the manager, typically what did
24 you do?

25 A I oversee -- I oversaw operations,

1 P. D'Onofrio

2 customer relations, customer problems,
3 employees.

4 Q Who is responsible for the money
5 in the register?

6 A Me.

7 Q Was anyone authorized to use the
8 register besides you?

9 A Other than another manager,
10 cashiers use the register.

11 Q Okay. Who were the cashiers
12 during the time that Mr. Villatoro worked there?

13 A I have no idea.

14 Q What percentage of your time did
15 you spend close to the register?

16 MR. BRESSLER: Object to
17 the form. What do you mean,
18 "Close to the register," how
19 close?

20 A Like in the front as opposed to
21 the kitchen?

22 Q Yeah. Yeah.

23 A I would say it was probably a
24 50/50 mix. I mean my job was to bounce from the
25 kitchen to the front, to the kitchen to the

1 P. D'Onofrio

2 front.

3 Q So you would spend 50 percent of
4 your time in the front of the house so to speak
5 and 50 percent of the time in the back of the
6 house --

7 A Right.

8 Q -- is that fair to say?

9 A Yeah.

10 Q Who supervised Mr. Villatoro on a
11 daily basis?

12 A While I was there, me, if my
13 brother was there, he would supercede me.

14 Q Who determined Mr. Villatoro's
15 performance while he was working at the
16 pizzeria?

17 MR. BRESSLER: Objection to
18 the form. I don't understand the
19 question.

20 Q Who evaluated his performance
21 while he was working at the pizzeria?

22 A Who evaluated his performance? I
23 mean I don't really know the -- I guess my
24 input, you know, if he was a bad employee, I
25 would report to my brother and say, you know,

1 P. D'Onofrio

2 this guy's not performing, if he was performing
3 as usual, it wasn't even a discussion.

4 Q Okay. Had you had employees at
5 the pizzeria who you told your brother were not
6 performing up to standards?

7 A Yes.

8 Q What happened with those
9 employees?

10 A He would either talk with them or
11 I would talk with them and try to straighten it
12 out, try to bring them back to in line.

13 Q And if it didn't work out?

14 A You know, we'd go our separate
15 ways.

16 Q They would be fired?

17 A Yes.

18 Q Would you do the firing?

19 A No.

20 Q Did you have an ownership interest
21 in the pizzeria at the time of Mr. Villatoro's
22 employment?

23 A No.

24 Q At any time did you have an
25 ownership interest in the pizzeria?

1 P. D'Onofrio

2 A No.

3 Q After Mr. Villatoro stopped
4 working at the restaurant, did you speak with
5 him again?

6 A No.

7 Q Have you ever had any
8 conversations with any employees of the
9 restaurant or of the pizzeria about this case?

10 A No.

11 Q Do you have an opinion as to
12 whether or not Mr. Villatoro is credible or not?

13 MR. BRESSLER: Objection.

14 He's a fact witness.

15 A Ah --

16 MR. BRESSLER: No, don't
17 give your opinion as to
18 credibility, please, Mr. Moser.

19 A You know what they say about
20 opinions.

21 Q Do you have an opinion as to
22 whether he is credible or not?

23 A No, I don't have an opinion.

24 Q Okay. Do you have an opinion as
25 to whether your brother is credible or not?

1 P. D'Onofrio

2 A Yes.

3 Q Do you believe that your brother
4 is credible?

5 A Yes.

6 Q Other than disengaging the alarm,
7 was there anything that you had to do upon
8 arrival at the pizzeria as a manager?

9 A My normal routine would be to
10 disengage the alarm, come in, turn certain ovens
11 on, um, put bank in the drawer.

12 Q Does the cash register show when
13 you put the bank in the drawer?

14 A No.

15 MR. MOSER: I have no
16 further questions. Thank you.

17 MR. BRESSLER: Nothing
18 further.

19 MR. MOSER: I'm going to
20 separately just file, unless you
21 want to stay, I'm just gonna
22 separately file a letter motion
23 asking for discovery of the
24 percentage ownership and the names
25 of the shareholders, I think that

1 P. D'Onofrio
2 might be a better way of resolving
3 it.

4 MR. BRESSLER: Under the
5 circumstances, I think so. But I
6 don't think it's relevant at all
7 at this point.

8 MR. MOSER: Okay.

9 MR. BRESSLER: I think you
10 got your other answers. And I
11 don't think there's any basis for
12 it at this point.

13 MR. MOSER: Okay. Thank
14 you.

15 MR. BRESSLER: Okay?

16 MR. MOSER: Okay.

17 MR. BRESSLER: Thank you.

18 (TIME NOTED: 1:47 p.m.)
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A C K N O W L E D G M E N T

STATE OF NEW YORK)

:ss

COUNTY OF)

I, PHILIP D'ONOFRIO, hereby certify that
I have read the transcript of my testimony taken
under oath in my deposition of September 16,
2019; that the transcript is a true and complete
record of my testimony, and that the answers on
the record as given by me are true and correct.

PHILIP D'ONOFRIO

Signed and subscribed to before me this
_____ day of _____, 2019.

Notary Public, State of New York

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ERRATA SHEET FOR THE TRANSCRIPT OF:

Case Name: Francisco Rodriguez and Aristides

Alfredo Dillatoro V. Ridge Restaurant, Inc.

D/b/a Alfredo's Pizzeria, et al

Deposition Date: September 16, 2019

Deponent: PHILIP D'ONOFRIO

Place: 193 Griffing Avenue, Riverhead, NY

CORRECTIONS

PG	LN	NOW READS	SHOULD READ	REASON FOR
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Date

Signature

Subscribed and sworn to before me
 this day of 2019.

(NOTARY PUBLIC)

C E R T I F I C A T E

I, DONNA L. RITZMANN, a Notary Public in
and for the State of New York, do hereby
certify:

THAT the witness(es) whose testimony is
hereinbefore set forth, was duly sworn by me;
and

THAT the within transcript is a true
record of the testimony given by said
witness(es).

I further certify that I am not related,
either by blood or marriage, to any of the
parties in this action; and

THAT I am in no way interested in the
outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 24th day of September, 2019.

DONNA L. RITZMANN

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